



Appl. No. 10/091,833
Amdt. dated April 7, 2004
Reply to Office action of January 9, 2004

Remarks/Arguments

In the examiner's final rejection dated September 4, 2003, the examiner allowed that the Rule 131 affidavits filed June 2, 2003 which established a date of invention no later than April 15, 2001 were sufficient to overcome the Tang, et al reference cited in the prior Office Action. The examiner nevertheless rejected Claims 1-16 under 35 USC 103(a) as unpatentable over US Application 2003/01115999 to Staats in view of US Patent 6,107,628 to Smith et al. As pointed out by the applicant in its November 10, 2003 response, the Staats et al application claims as its earliest priority date a provisional application filed December 19, 2001. Thus, since the Rule 131 affidavits filed June 2, 2003 were sufficient to overcome the Tang, et al reference cited in the prior Office Action, they were also sufficient to overcome the Staats reference as the Staats reference was filed at least 7 ½ months later than the date the present invention was conceived and first reduced to practice. The applicant further submitted a second affidavit signed by the named inventor, Keqi Tang, clarifying that the conception and reduction to practice of the claimed invention did occur in the United States. In response, the examiner held that all of the affidavits were defective, as they failed to recite that all statements made of the affiant's own knowledge were true and that all statements made on information and belief were believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon. The examiner further required a signed affidavit for each inventor in the inventive entity. Accordingly, the undersigned respectfully submits affidavits of all of the members of the inventive entity (Smith, Tang, and Lin), together with the affidavit of Dean Matson, all including the acknowledgement that all statements made of the affiant's own knowledge were true and that all statements made on information and belief were believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon, and all establishing

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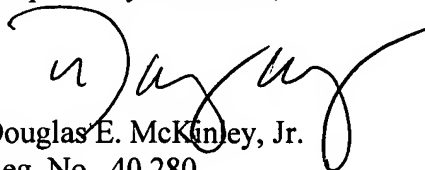
that the inventive entity, and the inventive entity alone, conceived and reduced the claimed invention to practice prior to the earliest priority date of the Staats reference.

The applicant therefore respectfully requests that the examiner remove the Staats reference as prior art, and remove the rejection under 35 USC 103(a) based upon the Staats reference, and allow the claims to issue.

In the event that the examiner is unwilling to remove the Staats reference and allow the claims to issue, the undersigned respectfully requests that the Tang, Smith, Lin and Matson affidavits submitted herewith nevertheless be entered into the record to place the application in better condition for appeal.

Applicant has made an earnest attempt to place the above referenced application in condition for allowance and action toward that end is respectfully requested. Should the Examiner have any further observations or comments, he is invited to contact the undersigned for resolution.

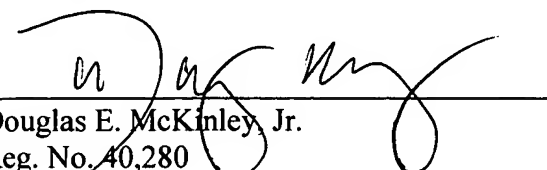
Respectfully submitted,



Douglas E. McKinley, Jr.
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The undersigned hereby certifies that the forgoing Amendment dated April 7, 2004 in reply to the office action of January 9, 2004 are being deposited with the United States Postal Service as First Class Mail, postage prepaid, together with an affidavit of Richard D. Smith signed April 5, 2004 (2 pages), an affidavit of Keqi Tang signed April 5, 2004 (2 pages), an affidavit of Yuehe Lin signed April 5, 2004 (2 pages), an affidavit of Dean W. Matson signed April 5, 2004 (1 page), and a return postcard, in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date set forth below.



Douglas E. McKinley, Jr.
Reg. No. 40,280

April 7, 2004
Date